IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6144 OF 2002

Shri Sujit Vasant Patil. .. .. Petitioner

Versus

1. State of Maharasthra
   through its Secretary Social
   Justice and Cultural Affairs
   Department.

2. Divisional Caste Certificates
   Verification Committee
   through its Divisional Social
   Welfare Officer.

3. Sub-Divisional Officer,
   Karad Sub-Division,
   Dist. Satara.

4. Pimpri Chinchwad Municipal
   Corporation through its
   Commissioner, Pimpri, Pune.

5. Shri Dattatray Pundlik
   Pharande, Pune. .. .. Respondents

Mr.Girish S. Kulkarni i/by Shri R.K. Mendadkar with Mr.V.P.Madane with Mrs.Supriya Khanzode for Petitioner.

Mr.C.R.Sonawane, AGP for Res.Nos.1 to 3.

Mr.Prafulla B. Shah for Res.No.5.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.
DATED : 23rd September 2004

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard Mr.Kulkarni with Mr.Mendadkar for the Petitioner. Mr.Sonawane, AGP appears for

Respondent Nos.1 to 3 and Mr.Shah for Respondent No.5.

2. The Petition seeks to challenge the decision and order dated 17th October 2002 passed by the Divisional Caste Certificate Verification Committee, Pune Division, Pune, invalidating the claim of the Petitioner as belonging to the Kunbi caste, which falls under the category of Other Backward Classes. The Petitioner is a Corporator elected to Respondent No.4-Municipal Corporation on a seat meant for Backward Class. After his election, Respondent No.5 filed a Complaint to the Scrutiny Committee. Thereupon, the necessary procedure including that of obtaining the Report from the Vigilance Officer, as laid down by the Apex Court in the case of Madhuri Patil & another vs. Additional Commissioner, Tribal Development & others reported in (1994) 6 SCC 241, was followed. The Scrutiny Committee came to the conclusion that the claim of the Petitioner was not justified. It, therefore, passed the impugned order dated 17th October 2002.

3. It is material to note that the State of Maharashtra has recently passed an Enactment viz. Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic

Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. Act No.XXIII of 2001) (for short, "the said Act"). Under the provisions of the said Act, if the Scrutiny Committee holds an enquiry and comes to a particular conclusion, its decision is final subject to a Writ Petition under Section 7(2) of the said Act. The said Act also provides for another consequence under Section 10(4) thereof, namely, that once the caste claim of a person is invalidated, such person shall be disqualified from being a member of any statutory body, if he has contested for local authority. In the instant case, a question was raised with respect to the validity and effect of this provision. A Division Bench, to which one of us was a member (H.L. Gokhale, J.) referred the questions arising therefrom for the determination of a Larger Bench. The Full Bench, in its judgment and order dated 6th August 2004, in the case of this very Petitioner viz. Sujit Vasant Patil vs. State of Maharashtra & others reported in (2004) 3 M.L.J. page 1109, came to the conclusion that once the caste claim is invalidated by the Committee, Section 10(4) of the said Act will immediately come into force and the election of the person concerned will stand vitiated. This is, however,

subject to the challenge to the decision of the Scrutiny Committee which the Petitioner may raise under Section 7(2) of the said Act as stated above.

4. The present Petition through prayer clause (b) makes this very prayer, (which now remains to be considered) namely, that the decision of the Scrutiny Committee be set aside. Mr.Kulkarni, learned Counsel appearing for the Petitioner, has taken us through the decision of the Scrutiny Committee and the material produced on behalf of the Petitioner as well as Respondent No.5. He drew our attention to the directions given by the Apex Court in the case of Madhuri Patil (supra). Mr.Kulkarni pointed out that a large number of relations of the Petitioner were married to the persons belonging to Kunbi community. He further pointed out that many relatives of the Petitioner had recorded their caste as "Kunbi" in the public documents. As against that Mr.Shah, learned Counsel appearing for Respondent No.5, pointed out that there were sufficient documents which showed that the relatives of the Petitioner had recorded their caste as "Maratha". Mr.Kulkarni submitted that in many parts of the State, both Kunbi and Maratha castes are used inter-changeable and in the instant case, there is no reason why such a

view should not be taken. He further submitted that the Vigilance Committee had made a Report in favour of the Petitioner and that being so, there was no reason for the Scrutiny Committee to pass the order that it has passed.

5. We have noted the submissions made by both the Counsel. However, apart from the documents, which are produced and relied upon by both the parties, what is more significant is the School Leaving Certificate. All these certificates of the Petitioner himself, his father and his grand-father record their caste as "Maratha". Not only that but the caste of the Petitioner's children is also recorded as "Maratha". Thus, whereas the Petitioner is contesting that he belongs to Kunbi community, he has recorded the caste of his own children as "Maratha". Moreover, the Petitioner's grand-father also recorded his caste as "Maratha". All these certificates are of primary importance and in the teeth of those certificates, it is not permissible for the Court to take a contrary view. The School Leaving Certificates, which are maintained on the basis of the information given by the students or their parents, are a public record. That public record is consistent in the present case right from the days of the grand-father of the Petitioner until

even the children of the Petitioner.

6. In the circumstances aforesaid, in our view, there is no error in the decision of the Scrutiny Committee. The Petition, therefore, stands dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

7. Mr.Kulkarni applies for stay of this order for a period of eight weeks. Mr.Shah opposes the application of stay. Inasmuch as the Petitioner has been continuing as a Corporator for the last two and half years, we direct that the present order will not operate for a period of eight weeks.

8. Certified copy expedited.

__ _____**(H.L. GOKHALE, J.)**

(SMT.NISHITA MHATRE, J.)